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MS. HARDING: Which also were not designated 30(b)(6) topics by any person who --

MR. BROWN: Can I ask that we just let the witness answer the question?

MS. HARDING: Well, I think if you want to ask him questions about topics that were designated that you asked him to become familiar with, then --

MR. BROWN: I didn't ask him a question about the tax annex. It was in his answer.

MS. HARDING: Well, that's because you asked him about any provision of the Plan. You asked -- we tried to prepare the witness to answer questions about topics that everybody asked about.

MR. BROWN: All right. I'll ask my question again. If you have an objection and you want to instruct him not to answer, then do

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it and we'll move on.

BY MR. BROWN:

Q. Mr. Finke, as you sit here today looking at the Joint Plan, can you identify particular provisions that you do not understand?

MS. HARDING: Object, asked and answered, but answer one more time if you'd like.

A. In addition to what I've already identified, the provision on the warrants is not entirely clear to me. And if I spent the time to go through the document page by page, there may be a few other sections that I don't feel very comfortable with in terms of the level of my understanding.

Speaking on behalf of W.R. Grace as a whole, there are individuals who understand those sections and, taken as a whole, I think W.R. Grace does have a good understanding of the Plan.

Q. Okay. Well, let me take your counsel up on her offer and direct

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your attention to page 87 of the Plan, Section 7.15, and what I would like you to do, because I have a series of questions about it, is why don't you take a few moments to review Section 7.15. In fact, if you want to take a break at this point --

MR. BROWN: Does that make sense? Okay.

MS. HARDING: Well, I mean, how long is it, again?

THE WITNESS: Seven pages.

MS. HARDING: Five-minute break?

MR. BROWN: That's fine, yes.

(Recess taken.)

BY MR. BROWN:

Q. Mr. Finke, we had a short break and before that I directed your attention to Section 7.15 of the Plan entitled Insurance Neutrality. Did you have an opportunity to review that section

during the break?

A. Yes.

Q. This was not one of the sections that you mentioned in your prior testimony that you were -- that you did not understand. Is it safe to say that this is a provision that you do understand? And I'm asking that question, really, in your capacity as an individual and as the designee on this subject for the debtors.

MS. HARDING: Object to form.

A. Yes, I believe I understand it.

Q. Okay. Can you turn to Section 11.9 of the Plan, and that's entitled Exculpation, and if you'd take a moment to review that section.

(The witness reviews the document.)

A. Okay.

Q. Given the language in Section 7.15, am I correct that asbestos insurance entities are not bound by the

PP's
Obj:
R;
BE

PP's
Obj:
R;
BE

PP's
Chr

PP's
Obj:
R;
BE

CI

PP's Obj:
R; BE

PP's Obj:

R, BE

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exculpation provision in Section 11.9 of the Plan?

MR. LIESEMER: Object to the form.

MS. HARDING: Object to the form.

A. I believe they -- the asbestos insurance companies are bound by Section 11.9.

Q. They are bound?

A. Yes.

Q. If you go back to 7.15, where is that set forth?

MS. HARDING: Object to form.

MR. LIESEMER: Same objection.

A. Well, of course, there's no provision in Section 7.15 that specifically states that the insurers are bound by Section 11.9. I assume that's not what you're asking, but -- well, literally, I think that is what you asked, so --

It also calls for a legal conclusion.

(The witness reviews the document.)

A. Okay. I would direct you to Section 7.15(h) which states that "the asbestos insurance entities shall be subject to the releases and injunctions to the extent described in this Plan" so my answer to your question is that I believe any provisions in the Plan that would constitute a release or an injunction, and I would include 11.9 in that language, are binding on the asbestos insurance entities.

Q. So your testimony is that 7.15(h) includes through its language Section 11.9?

A. Yes, that is how I read it.

Q. What consideration, if any, are Grace's insureds getting under the Plan in exchange for the exculpation provision in 11.9?

MR. LIESEMER: Objection to

Q. Yes, that is what I asked.

A. -- that's my answer then.

Q. So there's nothing in 7.15 that says that they're bound by 11.9 but your testimony is that they are in fact bound by 11.9?

A. Yes.

Q. Are there any other provisions in the Plan that are not specifically spelled out in Section 7.15 for which the insurers are bound notwithstanding Section 7.15?

MS. HARDING: Objection to form, and I think it misstates his testimony.

THE WITNESS: I'm sorry. Could you read back the question? (The reporter reads the pending question.)

MS. HARDING: Object to form. I think it's confusing, speculative. I don't see how you can possibly answer that question. But if you can answer it, go ahead.

form.

MS. HARDING: Objection to form.

A. All right. First, your question assumes that the insurance entities would be entitled to some consideration in exchange for being bound by Section 11.9. I don't know that to be the case. I don't know that they're not entitled to it either.

But as far as consideration, if one had to justify being bound by Section 11.9 on the basis of consideration, I think the answer with respect to asbestos insurance entities would also apply to all parties involved in the Chapter 11, which is that the entities and individuals covered by the exculpation have been active in the business of these Chapter 11 cases, they have had to take positions, make arguments, make decisions, et cetera, that affect one or more parties involved in the Chapter 11 cases and have thereby exposed themselves to potential liability, I

PP's Obj:
R; BE

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1 suppose, for their acts or omissions. And
2 the Chapter 11 itself could not proceed to
3 the point of resolution without the
4 efforts of these entities and these
5 individuals. So to the extent -- so there
6 is a -- in order to encourage and
7 facilitate the activities of the parties
8 listed in Section 11.9, it is my
9 understanding that it is common in these
10 types of bankruptcies to provide
11 exculpation of those entities and
12 individuals for their activities, and I'm
13 quoting here from 11.9, "In connection
14 with or arising out of the Chapter 11
15 cases." It is their participation and the
16 fruits of their participation that would
17 constitute consideration.

18 **Q. I want to circle back to a**
19 **question that I asked a few questions ago**
20 **concerning 7.15 and I asked you a question**
21 **to the effect of other than what's**
22 **specifically set forth in Section 7.15 are**
23 **there any other provisions in the Plan or**
24 **Plan documents that are binding upon**

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1 **Grace's insurers, and in answer to that**
2 **question you referred me to subsection (h)**
3 **and how 11.9 in the debtor's view was**
4 **encompassed within the language of (h).**

5 **So I want to go back to that**
6 **question and ask: Other than 11.9, is**
7 **there anything else?**

8 A. I'm --

9 MS. HARDING: Object to
10 form. I think it's confusing
11 and I'll leave it at that. If you
12 can answer, go ahead.

13 A. I believe there is a more
14 general provision relating to the binding
15 nature of court orders, findings, et
16 cetera. That is what I was looking for
17 initially in response to your answer and
18 then I remembered the provision in 7.15(h)
19 and so I've directed you to that
20 provision. If you want me to spend the
21 time -- I do not know where in that Plan
22 that more general provision is that I have
23 in mind.

24 **Q. Well --**

PP's
Obj:
R; BE

C1

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1 A. I could spend the time to
2 look for it if you'd like.

3 **Q. No, let's try this a little**
4 **differently. Look at 7.15(a).**

5 A. Okay.

6 **Q. It says "Except to the**
7 **extent provided in this Section 7.15,**
8 **notwithstanding anything to the contrary**
9 **in the Confirmation Order, the Plan or any**
10 **of the Plan documents -- nothing in the**
11 **Confirmation Order, the Plan or the Plan**
12 **documents, including any other provision**
13 **that purports to be preemptory or**
14 **supervening, shall in any way operate to**
15 **or have the effect of impairing any**
16 **asbestos insurance entity's legal,**
17 **equitable or contractual rights, if any,**
18 **in any respect." Have I read that**
19 **correctly?**

20 A. I believe so.

21 **Q. Okay. And what I'm asking**
22 **is: Given that broad statement, are there**
23 **any other provisions in the plan that are**
24 **not set forth in 7.15 that override the**

Page 85

1 **language in 7.15(a)?**

2 MS. HARDING: Object to
3 **C1** form.

4 A. Based on the language of
5 7.15(a), and if I'm understanding it as it
6 was intended, it states by its terms that
7 nothing else in the Plan or any of the
8 Plan documents would operate, you know, to
9 impair the -- an asbestos insurance
10 entity's rights.

11 **Q. So is your answer no?**

12 MS. HARDING: Object, asked
13 **C1** and answered, but...

14 A. Based on the language in
15 7.15(a), my answer would be no, subject
16 to -- subject to wanting to review the
17 remainder of the Plan because, as I
18 mentioned, I do have in mind that there is
19 one or more general provisions concerning
20 the applicability or binding nature of
21 court orders, court findings and the like.

22 And while I understand 7.15(a)
23 appears to act in such a way that would
24 make my proviso in my answer irrelevant, I

PP's
Obj:
R;
BEPP's
C1PP's
Obj:
R;
BE

PP's Obj:

R; BE

Page 86

CI

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PP's
Obj:
R;
BE

would still feel more comfortable having found and reviewed those other provisions before giving an unequivocal "no".

Q. Let's do this because we don't want to waste time. Why don't we -- I'm going to continue on. We'll obviously have breaks. And during one of those breaks, why don't you look for whatever provision it is that you -- or provisions that you think you're talking about and then when we return from our break, even if I'm not the questioner, would you bring those one or two sections up to me? That will save us some time.

A. That's fine.

Q. All right. I want to focus your attention now on 7.15(b).

(The witness reviews the document.)

A. Okay.

Q. You see on the second line there rolling over to the third line the phrase "The beneficiaries of the Asbestos PI Trust"? Do you see that?

A. Yes.

know that it is, per se, defined.

MS. HARDING: Where is it in the TDP?

MR. BROWN: It's in Section 5.13.

MR. COHN: Is that on page 49 of the TDP?

MR. BROWN: I don't know the page number.

THE WITNESS: Page 49, yes.

A. Based on Section 5.13 of the TDP and on the basis that a holder of an indemnified insured TDP claim potentially may have that claim paid by the PI Trust in accordance with Section 5.13, I would interpret such a holder to be a beneficiary of the PI Trust.

Q. Okay. So let's just take one of my clients, for example. Let's take Seaton Insurance Company. If Seaton Insurance Company has an indemnified insured TDP claim, then Seaton Insurance Company, as I understand 7.15(b), is bound

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Q. What do you understand that term to mean?

MR. LIESEMER: Object to the form.

Q. What does that term mean?

A. I understand it to mean holders of asbestos PI claims.

Q. Okay. And does that include holders of indirect Asbestos PI Trust claims?

MR. LIESEMER: Object to form.

A. Yes.

Q. And does it include indemnified insurer -- does it -- excuse me.

Does that term include the holders of indemnified insurer TDP claims?

MR. LIESEMER: Object to the form.

A. Is that a defined term?

Q. Good question. It is a term that appears in Section 5.13 of the Trust Distribution Procedures. I don't

by the Plan, the Plan documents and the confirmation order?

MR. LIESEMER: Object to the form.

MS. HARDING: Object to the form.

Q. Do I have that correct?

A. I believe so, yes.

Q. Okay. And is it bound by the Plan, Plan documents and confirmation order insofar as it may also be listed as being a partially settled insurer?

MS. HARDING: Object to the form. And are you referring to 7.15(b)?

MR. BROWN: Yes.

MS. HARDING: Back to 7.15(b) when you asked that question?

MR. BROWN: Yes.

A. I'm not sure I see the connection between Section 5.13 of the TDP and your question, if there is any. The -- I believe the answer is they are

PP's
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BEPP's
Obj:
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BEPP's
Obj:
R;
BEPP's
Obj:
R;
BE

PP's Obj:
R, BE

Page 90

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bound to the same extent any asbestos insurance entity is bound under the Plan.

Q. Mr. Finke, you understand, don't you, that -- well, let's not do it that way. Let's go to -- I think it's the asbestos insurance transfer agreement.

MS. HARDING: Is that one of our exhibits?

MR. BROWN: No, I'm sorry, it's not that. It's Exhibit 5.

Q. Do you have Exhibit 5?

A. Retained causes of action?

Q. No. This is Exhibit 5 to the Exhibit Book.

A. To the Exhibit Book.

MS. HARDING: I have a copy. It's not his but you can look at it if you'd like.

MR. COHN: What is the document?

MS. BAER: It's Exhibit 5 to the Exhibit Book, Schedule of Settled Asbestos Insurers.

there are indemnity claims against the debtor and to the extent that those are asbestos-related, those fit within the defined term "indemnified insured TDP claims", correct?

MS. HARDING: Object to form.

MR. LIESEMER: Join.

MS. HARDING: Are you looking for 7.15?

MS. ALCABES: 5.13.

MS. HARDING: There you go.

A. No, I don't agree.

MR. BROWN: Could you read back the last question?

(The reporter reads the requested portion.)

A. No, I don't agree. My understanding of Section 5.13 is this provision would take effect only upon confirmation of the Plan since the definition indicates, or requires, that the indemnified insurer TDP claim is channeled to the PI Trust, which it can't

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(Exhibit 5 to Exhibit Book, Schedule of Settled Asbestos Insurers Entitled to 524(g) Protection marked for identification as Exhibit Finke-9.)

Q. What I'd like you, Mr. Finke -- first of all, why don't you identify what we've just marked as Exhibit 9?

A. Okay. Finke Exhibit 9 is Exhibit 5 to the Exhibit Book. It is entitled Schedule of Settled Asbestos Insurers Entitled to 524(g) Protection.

Q. Now, you understand, don't you, that at least some of the insurance companies that are listed on this schedule have indemnity claims against the debtors?

MR. LIESEMER: Object to the form of the question.

A. Yes, I believe that's correct.

Q. And to the extent that

be at this point.

Q. All these questions are in the context of the Plan being confirmed.

A. Well, then I don't --

Q. Let me back up. I think the record's kind of muddled at this point.

A. Okay.

Q. Why don't you -- if you look at the schedule of settled asbestos insurance companies, I believe you'd testified -- that's Exhibit 9 -- I believe you'd testified that some of the companies that are listed on there have contractual indemnity claims against the debtors.

A. That was under the assumption we were talking about current claims. I didn't realize you had -- that your questions were all in the context of the assumption of a confirmed plan.

Q. All right. If you look at the schedule, you understand that the insureds that are listed on here have settlement agreements with the debtors,

PP's Obj:
R; DE; F

Page 94

C1

Page 96

1 correct?

2 A. Yes.

3 Q. And you also understand
4 that certain of those settlement
5 agreements have contractual indemnity
6 provisions in them, correct?

7 A. Yes.

8 Q. And I believe you testified
9 that those contractual indemnity
10 provisions are under the Plan to be
11 treated as indemnified insured TDP claims
12 under Section 5.13 of the TDP. Is that
13 correct?

14 A. No, no, that certainly
15 wasn't my intent.

16 Q. Okay. How are they being
17 treated under the Plan?

18 A. As indirect PI Trust
19 claims.

20 Q. Okay. Do you understand
21 indemnified insured TDP claims to be a
22 class of indirect PI Trust claims?

23 A. It appears to me to be
24 that, that they are the same. Or at least

Page 95

1 I don't see a distinction. Whether they
2 are intended to be or not, I don't know.
3 Since we really were not involved in the
4 drafting of the TDP, my --

5 Q. The "we" you're referring
6 to is Grace?

7 A. Grace, yes. My bigger
8 problem is that once the plan is confirmed
9 I don't understand -- have not understood
10 and don't today how there can be such a
11 claim under 5.13 since my understanding of
12 the mechanics of the asbestos PI
13 channeling injunction is that any claim
14 against a settled insurer which is an
15 asbestos protected party would be barred
16 and that claim would be channeled to the
17 PI Trust and that that holder of that PI
18 claim, the sole resolution -- not
19 resolution -- the sole source for any
20 recovery for the holder of that claim is
21 the PI Trust.

22 So I have not understood, and still
23 don't, how any indemnified insurer TDP
24 claim could arise.

1 Q. Let's get back to the
2 insurance neutrality provision then, which
3 is 7.15.

4 A. Okay.

5 Q. Getting back to 7.15(b),
6 this line of questioning talked with or
7 started with the reference to the term,
8 the phrase, "the beneficiaries of the
9 Asbestos PI Trust".

10 A. Uh-huh.

11 Q. I'm a little confused by
12 your testimony at this point. If you are
13 the holder of an indemnified insurer TDP
14 claim post-confirmation, are you a
15 beneficiary of the Asbestos PI Trust?

16 MR. LIESEMER: Object to
17 the form of the question.

18 MS. HARDING: Object to
19 form.

20 A. Assuming for the sake of
21 argument such a claim could arise, my
22 understanding would be yes.

23 MR. BROWN: All right. I'm
24 going to shift gears. We'll mark

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1 another document. The document I'm
2 about to mark is one of our
3 settlement agreements so we can
4 mark this portion of the deposition
5 subject to the protective order but
6 what I would like to do with this
7 one, like we did with Mr. Posner,
8 to the extent that no one objects
9 to the extent that we, my clients,
10 would like to use this portion of
11 the testimony without having it
12 under seal, we would be able to do
13 so without asking all parties to
14 agree. Is that fair?

15 MS. HARDING: That's up to
16 you.

17 MR. BROWN: All right.

18 MR. LEWIS: Did you say
19 Mr. Posner?

20 MR. BROWN: Yes.

21 MR. LEWIS: Okay.

22 (Settlement Agreement
23 Bates stamped OB 1 through 33
24 marked for identification as

PP's
Obj:
R; DE;
FPP's
chrPP's
Obj:
R; DE;
F

Page 110

1 about or been asked about the scenario
2 you're describing.

3 **Q. But if the claim is**
4 **asserted by the insurers against Fresenius**
5 **Medical Care Holdings, it's being asserted**
6 **against a non-debtor, correct?**

7 MS. HARDING: Object to
8 form.

9 A. In the first instance,
10 yes.

11 **Q. And that would then take it**
12 **outside the definition of indirect PI**
13 **Trust claims which by definition have to**
14 **be against the debtor, right?**

15 MS. HARDING: Just object
16 to form in terms of the
17 hypothetical. I'm not sure where
18 we are in the hypothetical, but go
19 ahead.

20 A. Well, I understand what
21 you're saying and, yes, if you were to
22 stop right there I would agree with you.
23 But when you add in what I think is a
24 fact, which is that Grace would owe an

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1 the definition or description of an
2 indemnified insured TDP claim.

3 **Q. Okay. Let me ask you this**
4 **then: What is the operative injunction in**
5 **the Plan that accomplishes both the**
6 **enjoining and channeling of the claim that**
7 **we're talking about; namely, a claim for**
8 **contractual indemnity running from the**
9 **insurers against Fresenius Medical Care**
10 **Holdings, Inc.?**

11 A. The --

12 MS. HARDING: Object to
13 form.

14 MR. LIESEMER: Object to
15 form.

16 A. The asbestos PI channeling
17 injunction.

18 **Q. Does the successor claims**
19 **injunction in the Plan also enjoin the**
20 **claim?**

21 MR. LIESEMER: Object to
22 form.

23 MS. HARDING: Object to
24 form to the extent we're still

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1 indemnification obligation to FMCH in
2 those circumstances, the reality of your
3 hypothetical is that the claim would
4 be ultimately a claim against the
5 debtors.

6 **Q. So is it your testimony on**
7 **behalf of Grace that the claim I've**
8 **described, running from the insurers**
9 **against Fresenius, that is in fact an**
10 **indirect PI Trust claim?**

11 MS. HARDING: Object to
12 form.

13 MR. LIESEMER: Object to
14 form.

15 A. That is my view, yes.

16 **Q. Is it also your view that**
17 **that claim would be an indemnified insurer**
18 **TDP claim as described in Section 5.13 of**
19 **the TDP?**

20 MS. HARDING: Same
21 objection.

22 MR. LIESEMER: Object to
23 form.

24 A. Yes, it does appear to fit

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1 talking about the hypothetical.

2 A. No, I don't believe so.

3 **Q. All right, I want to ask**
4 **you now, Mr. Finke, a sort of more broad**
5 **question. Class 6 includes, among other**
6 **things, individual asbestos claimants'**
7 **claims against Grace, correct?**

8 MS. HARDING: Object to
9 form.

10 MR. LIESEMER: Join.

11 A. Did you say asbestos claims
12 or asbestos PI claims?

13 **Q. I'm using it generically.**
14 **Fair enough, that's a fair -- the**
15 **purpose -- Grace has been sued in a number**
16 **of asbestos personal injury claims,**
17 **correct?**

18 A. Yes.

19 **Q. Okay. And those claims,**
20 **among other claims, are classified as**
21 **Class 6 under the Plan, right?**

22 A. Yes.

23 **Q. And indirect PI Trust**
24 **claims that we've just been discussing,**

Page 116

PP;
Obj;
R;
BE

PP;
Obj;
R;
BE

Page 117

MS. HARDING: Object to form and to the -- and object to the extent it calls for a legal conclusion. If you can answer, go

Pj
Obj:
R;
BE

PP's
Ctr

PR;
Obj:
R;
BE

pp. 3
Ct

Page 118

1 ahead.

2 A. Because the contractual
3 indemnity claims that arise based out of
4 an asbestos PI claim all seek to impose
5 liability upon the debtors as a result of
6 the debtors' asbestos-related products or
7 operations.

8 **Q. Okay. Is Fresenius a**
9 **separate entity from any of the debtors**
10 **today?**

11 MS. HARDING: Object to
12 form.

13 **Q. Separate legal entity.**

14 A. Yes.

15 **Q. How about Sealed Air**
16 **Corporation? Is that a separate legal**
17 **entity?**

18 A. Yes.

19 **Q. And they're both**
20 **non-debtors, correct?**

21 A. Correct.

22 **Q. Are they -- do they have**
23 **separate -- does Fresenius and the debtors**
24 **have separate management?**

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1 A. Yes.

2 **Q. And would your answer be**
3 **the same with respect to Sealed Air and**
4 **the debtors?**

5 A. Yes.

6 **Q. Does Fresenius and the**
7 **debtors or do Fresenius and the debtors**
8 **have any shared operations?**

9 A. Not that I'm aware of.

10 **Q. Do Sealed Air and the**
11 **debtors have any shared operations?**

12 A. Not that I'm aware of.

13 **Q. Do any of the debtors have**
14 **any ownership interest in Fresenius?**

15 MS. HARDING: Object to
16 form.

17 A. I don't know but I'm not
18 aware of any.

19 **Q. Do any of the debtors have**
20 **any ownership interest in Sealed Air?**

21 MS. HARDING: Same
22 objection.

23 A. Again, I don't know but I'm
24 not aware of any.

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1 **Q. Do any of the debtors**
2 **control Fresenius?**

3 A. No.

4 **Q. Do any of the debtors**
5 **control Sealed Air?**

6 A. No.

7 MR. BROWN: How did we mark
8 the transfer agreement?

9 MS. BAER: The insurance
10 transfer agreement is Exhibit 4.
11 (Off the record.)

12 BY MR. BROWN:

13 **Q. We talked about this**
14 **earlier. Can you take a look at Schedule**
15 **1 to Exhibit 4?**

16 A. Yes.

17 **Q. My question is: Does**
18 **Fresenius have any rights under the**
19 **policies listed on Schedule 1?**

20 MS. HARDING: Object to
21 form.

22 A. I don't believe so.

23 **Q. How about Sealed Air?**

24 A. I don't believe so.

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1 MR. BROWN: Why don't we
2 take a five-minute break. I may be
3 finished.

4 MS. HARDING: Okay.
5 (Recess taken.)

6 BY MR. BROWN:

7 **Q. Mr. Finke, I have a few**
8 **more questions for you and then I'll pass**
9 **you along to the next questioner.**

10 **Can you take a look at Section 11.9**
11 **of the Plan again? That's the exculpation**
12 **provision.**

13 A. Yes.

14 **Q. Do you understand the scope**
15 **of the exculpation provision in terms of**
16 **the entities and individuals that are**
17 **actually exculpated under this**
18 **provision?**

19 MS. HARDING: Object to
20 form.

21 A. Yes, I believe I do.

22 **Q. Okay. Well, let me give**
23 **you a couple of examples. It's includes**
24 **the Asbestos PI Committee, correct?**

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A. Yes.

Q. And we talked a little about the Asbestos PI Committee being individual asbestos claimants, correct?

A. Yes.

Q. And you testified that, by and large, they perform their duties as committee members through their asbestos personal injury counsel, correct?

A. Correct.

Q. Okay. And that would include, among other individuals, Mr. Rice and his law firm, correct?

A. Yes, I believe that's right.

Q. And Mr. Cooney and his law firm?

A. Well, I guess what I don't know is which of the -- which of the asbestos plaintiffs' attorneys we've identified are -- or have clients that are members of the committee. I just don't recall.

Q. Okay, fair enough.

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There are also -- the TAC is within the scope of this exculpation provision, correct?

A. Yes.

Q. So it would include the TAC members, Mr. Weitz, Mr. Cooney, Mr. Budd and Mr. Rice, correct?

A. Correct.

Q. And to the extent that the firms -- to extent that any members of the Asbestos PI Committee are represented by the firms of Mr. Cooney, Mr. Rice, Mr. Weitz and Mr. Budd, they too would be covered by it, correct?

A. Correct.

MS. HARDING: Object to form.

Q. All right. Now, about halfway down the provision it has a phrase that says "or any of their respective Representatives". Do you see that?

A. Yes.

Q. And Representatives is in initial cap R, correct?

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A. Yes.

Q. Why don't you go to the defined term Representatives which appears at 33 of the Joint Plan. It's definition number 177.

MS. HARDING: I think I lost the line of -- did you previously ask if the TAC was covered --

MR. BROWN: Yes.

MS. HARDING: -- by the exculpation in 11.9?

MR. BROWN: Yes.

MS. HARDING: I'm just looking and I don't see that so I just wanted to make sure that the record wasn't unclear.

MS. BAER: Barbara.

MR. BROWN: Asbestos PI Trust Advisory Committee.

MS. HARDING: All right.

MR. BROWN: We're happy to have it taken out.

MS. HARDING: No, no. I

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was talking because I was going too fast and I just didn't see it and I wanted to make sure.

A. Okay.

Q. Sitting here today and looking at the defined term Representatives and seeing its use in Section 11.9 of the Plan, do you have any idea of the scope of this exculpation provision in terms of who's covered by it?

MS. HARDING: Object to form.

A. Well, certainly the definition of Representatives gives me an idea as to the scope of the exculpation provision.

Q. Okay. But I mean the actual identities of the individuals, you couldn't -- you couldn't give me a list today, could you?

A. No.

Q. Okay.

A. I could not.

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Q. Do you have any idea who the advisors or consultants are of Mr. Cooney's firm or Mr. Weitz's firm or Mr. Rice's firm or --

A. No.

MS. HARDING: Object to form.

A. No, I do not.

Q. Okay. How does the court know if it confirms this Plan who all's covered by the exculpation provision, given the breadth of the definition of Representatives?

MS. HARDING: Object to form --

MR. LIESEMER: Object to form.

MS. HARDING: -- to the extent it calls for a legal conclusion.

A. I would be speculating that perhaps they'll be -- those individuals would be identified to the court at some point, but I don't know.

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Q. Do you know how far back the exculpation provision goes in terms of time?

A. No, because it's -- it's not set up to be framed in terms of a beginning date and an end date. It's -- the scope of the provision relates to conduct in connection with or arising out of the Chapter 11 cases so that, to my understanding, that could encompass conduct before the Chapter 11 cases were commenced, conduct afterwards.

Q. How long before it was commenced?

MS. HARDING: Object to form.

A. The provision does not say.

MR. BROWN: Okay. All right. I think with that I'm going to pass you along to Miss Alcabes, and I may -- I'll reserve the right for any follow-up questions after the others have finished. Thank

you.

THE WITNESS: You're welcome.

EXAMINATION BY
MS. ALCABES:

Q. Good afternoon, Mr. Finke. My name is Elisa Alcabes. I'm counsel for Travelers Casualty & Surety Company. We've met before.

A. Yes.

Q. Can you just tell me what you did to prepare for your deposition today?

A. I reviewed the Plan; a number of the exhibits to the Plan, some more than once; met with counsel, Grace's bankruptcy counsel, to discuss various provisions of the Plan and related documents. I'm trying to think if there is anything else. Read the deposition transcript of Peter Lockwood and listened to the -- listened in on the deposition of Jeff Posner which I viewed as preparation for this deposition. That's all I can

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recall at this point.

Q. About how much time did you spend with Grace's bankruptcy counsel preparing?

A. About 15 hours.

Q. And you said you listened in on the Posner deposition. Do you agree with the testimony that Mr. Posner provided?

MS. HARDING: Object to form.

A. Yes, I do. I can't think of anything that I disagreed with so I would say, in general, yes.

Q. And you said previously that you generally agreed with the deposition testimony of Mr. Lockwood as well, correct?

A. Correct.

Q. You mentioned that there was one point in his deposition where he seemed to have equated coverage in place with the reimbursement agreements. Is that right.

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1 A. Yes.

2 **Q. Do you recall whether there**
3 **was a substantive issue that you had with**
4 **it or whether he just seemed to have**
5 **inadvertently referred to reimbursement**
6 **agreements as coverage in place?**

7 A. I would -- I don't know if
8 there was -- I don't recall having a
9 substantive disagreement. At the time I
10 was -- I had focused on the defined terms
11 and if he was using those terms as defined
12 terms in the Plan, then it occurred to me
13 that he was making an incorrect statement
14 since, of course, he's speaking and didn't
15 identify them as whether or not he was
16 referring to them as defined in the Plan.
17 He may or may not be incorrect in equating
18 the two; I don't know.

19 **Q. I'm going to represent that**
20 **we've looked through the Lockwood**
21 **transcript and I'm not sure which**
22 **reference you're talking about and we**
23 **would like to understand what it is that**
24 **you were disagreeing with to the extent it**

1 **may be substantive so we would ask during**
2 **a break or subsequent to the deposition if**
3 **you would please let us know which portion**
4 **of the transcript you're referring to.**

5 **Right now, can you turn to what's**
6 **been marked as Finke Exhibit 4, which is**
7 **the transfer agreement, and turn to**
8 **Schedule 2. That's the schedule of**
9 **asbestos insurance settlement agreements, F**
10 **correct?**

11 A. Correct.

12 **Q. And in preparation for your**
13 **deposition, did you review any of these**
14 **agreements?**

15 A. No, I did not.

16 **Q. Are you generally familiar**
17 **with any of the agreements?**

18 A. No, I am not.

19 **Q. Do you have a general**
20 **understanding of what the agreements**
21 **provide?**

22 A. Very general.

23 **Q. What's your general**
24 **understanding?**

1 A. That the insurance company
2 agreed to pay a definite amount of money
3 in exchange for an indemnification
4 agreement from Grace to indemnify the
5 insurer in the event that claims were made
6 against -- in the event that asbestos
7 claims were made against the policy.

8 **Q. And can you turn to**
9 **Schedule 3 which is the schedule of**
10 **asbestos insurance reimbursement**
11 **agreements?**

12 A. Yes.

13 **Q. Did you review any of those**
14 **agreements prior to your deposition?**

15 A. No.

16 **Q. Have you ever seen any of**
17 **the agreements?**

18 A. No, I have not.

19 **Q. Are you generally familiar**
20 **with what the agreements say?**

21 A. Again, on a very general
22 level.

23 **Q. What's your general**
24 **understanding?**

1 A. That the parties to the
2 agreement worked out procedures or
3 protocols pursuant to which the insurers
4 would reimburse the insured party in whole
5 or in part for asbestos claims paid by the
6 insured.

7 **Q. To your understanding, who**
8 **was the insured party that you're**
9 **referring to?**

10 A. Grace or one of the Grace
11 debtors.

12 **Q. Do you have an**
13 **understanding of the obligations that**
14 **Grace undertook in executing those**
15 **agreements?**

16 A. No.

17 **Q. Do you have a general**
18 **understanding?**

19 A. No, I don't.

20 **Q. Do you have an**
21 **understanding that Grace undertook to**
22 **perform a certain allocation with respect**
23 **to claims that were going to be -- with**
24 **respect to claims that they were going to**

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<p>1 to our rights.</p> <p>2 MR. LIESEMER: Well, wait a</p> <p>3 minute. There was a dialogue</p> <p>4 between the Libby claimants'</p> <p>5 representatives and the ACC with</p> <p>6 respect to the TDP. They weren't</p> <p>7 completely shut out of the --</p> <p>8 MR. LEWIS: That's the only</p> <p>9 thing that was discussed with us,</p> <p>10 that is correct, counsel.</p> <p>11 Q. In any event, I'll get on</p> <p>12 to the next area because counsel's</p> <p>13 directed you not to answer any questions</p> <p>14 concerning the first matters relating to</p> <p>15 the Plan. The second one is the funding</p> <p>16 of the asbestos PI Trust including value</p> <p>17 at time of negotiation of assets to be</p> <p>18 used to fund the Asbestos PI Trust. Oh,</p> <p>19 I'm sorry, I've got the wrong man there.</p> <p>20 That's LaForce.</p> <p>21 Go to asbestos -- go to injunctions</p> <p>22 on page 10. The first area is the</p> <p>23 asbestos PI channeling injunction. You're</p> <p>24 designated to testify about that?</p>	<p>1 holders of those claims.</p> <p>2 Q. And that's covered in</p> <p>3 Section 8.2 --</p> <p>4 A. Correct.</p> <p>5 Q. -- of the amended Plan of</p> <p>6 Reorganization, correct?</p> <p>7 A. Correct.</p> <p>8 Q. By the way, you indicated</p> <p>9 in earlier testimony that there are -- or</p> <p>10 suggested that there might be more</p> <p>11 discussion or more changes or changes</p> <p>12 coming to this Plan.</p> <p>13 A. I don't recall discussing</p> <p>14 that, but --</p> <p>15 Q. I thought you said that</p> <p>16 there were issues that hadn't been</p> <p>17 resolved related to this Plan. Maybe I</p> <p>18 misunderstood you.</p> <p>19 A. There are details -- what I</p> <p>20 recall talking about are details with</p> <p>21 respect to some of the Plan documents that</p> <p>22 need -- still need to be worked out. I</p> <p>23 don't recall addressing whether there</p> <p>24 would be changes to the Plan, although I</p>
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<p>1 A. Yes.</p> <p>2 Q. And you're familiar with</p> <p>3 the asbestos PI channeling injunction and</p> <p>4 the effect it has on those of interest to</p> <p>5 this litigation?</p> <p>6 MS. HARDING: Object to</p> <p>7 form.</p> <p>8 A. Yes.</p> <p>9 Q. First of all, what is a</p> <p>10 channeling injunction?</p> <p>11 A. It's --</p> <p>12 MS. HARDING: Just object.</p> <p>13 Are you asking him under the -- the</p> <p>14 definition of channeling injunction</p> <p>15 under this Plan or just generally?</p> <p>16 MR. LEWIS: I'm just asking</p> <p>17 him what a channeling injunction</p> <p>18 is, what is his understanding of a</p> <p>19 channeling injunction.</p> <p>20 A. An injunction that requires</p> <p>21 holders of certain types of claims to</p> <p>22 pursue those claims only against, as in</p> <p>23 this case, the Asbestos PI Trust. It</p> <p>24 makes the Trust the sole recourse for</p>	<p>1 believe there -- well, the Plan itself</p> <p>2 provides for the ability to modify it.</p> <p>3 Q. Now, this is the first</p> <p>4 Amended Joint Plan. Is there a second</p> <p>5 Amended Joint Plan in the offing or does</p> <p>6 this look like it, for the most part?</p> <p>7 A. I expect there will be some</p> <p>8 changes to this Plan before -- before</p> <p>9 final confirmation.</p> <p>10 Q. Let's go to Section 8.1</p> <p>11 relating to channeling injunctions -- the</p> <p>12 channeling injunction -- excuse me -- and</p> <p>13 8.2. I apologize.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Does that treat the Libby</p> <p>16 claimants, PI claimants, just like all</p> <p>17 other PI claimants?</p> <p>18 A. Yes.</p> <p>19 (Mr. Plevin enters the</p> <p>20 deposition room)</p> <p>21 Q. Okay. Now, the second area</p> <p>22 of inquiry was development of asbestos PI</p> <p>23 channeling injunction among Plan</p> <p>24 proponents, including negotiations, other</p>

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1 gave relating to the 17 Maryland Casualty
2 topics to which you as the Grace
3 designated representative disagree?

4 A. No.

5 Q. I wanted to ask you some
6 questions about the so-called independent
7 claims against Maryland Casualty that Mr.
8 Lewis asked you about. During his
9 deposition, Mr. Lockwood gave an example
10 of what he deemed to be an independent
11 claim, and I'll quote from page 517 of his
12 deposition transcript.

13 Mr. Lockwood said: "I mean, if
14 somebody in Libby, Montana is run over by
15 an insurer's truck on the way to work, of
16 course the injunction doesn't bar the
17 claimant from suing that insurer."

18 My question for you, Mr. Finke: Is
19 do you agree with that example as an
20 example of an independent claim --

21 A. Yes.

22 Q. -- if it existed?

23 A. Yes.

24 Q. Now, as to the Plan's

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1 Plan treatment of so-called independent
2 claims against Maryland Casualty?

3 A. Yes, because I hadn't -- I
4 hadn't considered my earlier answer
5 viewing it from the perspective of the
6 terms or scope of the indemnification
7 obligation by Grace, which is what this
8 testimony relates to.

9 Q. Mr. Lockwood's testimony?

10 A. Yes. Sorry.

11 Q. And, Mr. Finke, would you
12 agree with me that there's no provision of
13 the Plan that expressly carves out Libby's
14 so-called independent claims against
15 Maryland Casualty from the asbestos PI
16 channeling injunction?

17 A. I would agree with that.

18 MR. WISLER: That's all I
19 have. Thank you.

20 EXAMINATION BY
21 MR. COHN:

22 Q. Mr. Finke, Jay Cohn for
23 Federal Insurance Company.

24 Earlier you weren't able to testify

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1 treatment of any other so-called
2 independent claims by the Libby claimants,
3 I'm going to ask you to please read from
4 page 525, line 1 through 527, line 24 of
5 the transcript of Mr. Lockwood's
6 deposition and then I'm going to ask you a
7 question.

8 A. Okay.

9 Q. I'm going to ask you a
10 couple of questions.

11 A. Okay.

12 Q. Take your time, please.

13 MS. HARDING: 525, line one
14 through 527, line 24?

15 MR. WISLER: Correct.

16 (The witness reviews the document.)

17 A. Okay.

18 Q. As the designated Grace
19 representative, do you agree with the
20 testimony of Mr. Lockwood that you just
21 read?

22 A. I do, yes.

23 Q. And does that testimony
24 clarify your earlier testimony about the

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1 about the TDPs. Is that because Grace had
2 nothing to do with the formulation of the
3 TDPs?

4 A. No.

5 MS. HARDING: Object to
6 form but go ahead.

7 THE WITNESS: Sorry.

8 A. No. The primary reason is
9 that Grace -- while Grace was not a
10 principal drafter of the TDPs, when we
11 were provided with a draft, I asked Jay
12 Hughes to review it and provide any
13 comments that he had on it, and of course
14 we all -- our outside counsel also
15 reviewed it. But, in essence, I delegated
16 responsibility to Jay since he is much
17 more familiar with the personal injury
18 litigation, claims history, disease
19 levels, et cetera. So I personally am not
20 the most knowledgeable at Grace about the
21 TDPs.

22 Q. Does W.R. Grace have an
23 understanding of what the concept of
24 insurance neutrality means?

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1 A. Yes.
 2 Q. Could you explain to me
 3 what W.R. Grace's concept -- understanding
 4 of that concept is?

5 MS. HARDING: Just object
 6 to form to the extent it calls for
 7 a legal analysis or legal
 8 conclusions. To the extent that
 9 you can answer...

10 A. I think our understanding
 11 of insurance neutrality is well worded in
 12 Section 7.15(a), which is that none of the
 13 Plan provisions, other than a few specific
 14 exceptions, will operate to impair any of
 15 the asbestos company's contractual rights
 16 under their policies or settlement
 17 agreements or reimbursement agreements.

18 Q. Okay. So if you were to
 19 carve out the first independent clause of
 20 7.15(a) which reads: "Except to the
 21 extent provided in this Section 7.15," the
 22 balance of that paragraph sets forth W.R.
 23 Grace's understanding of the concept of
 24 insurance neutrality; is that right?

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1 MS. HARDING: Object to
 2 form.

3 A. I don't entirely agree with
 4 your statement or your question because I
 5 think the definitions of certain terms,
 6 and in particular the asbestos insurance
 7 coverage defenses, also relates to our
 8 understanding of insurance neutrality.
 9 Specifically, that that -- that definition
 10 identifies a couple of defenses that the
 11 insurance companies would not be able to
 12 assert after confirmation.

13 Q. Those would be exceptions
 14 to a true insurance neutrality, right?

15 MS. HARDING: Object to
 16 form and to the extent that it
 17 calls for a legal conclusion.

18 A. Yes.

19 Q. Thank you.
 20 Are you familiar with the UNR
 21 decision from the Seventh Circuit?

22 A. I've heard of it. I've not
 23 read it. I have a very general
 24 understanding of --

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1 Q. Could you tell me --
 2 A. -- what the holding --
 3 Q. Could you tell me your
 4 understanding of what happened in UNR?

5 MS. HARDING: Object to
 6 form, object to the extent that it
 7 calls for Mr. Finke's legal
 8 analysis of the decision and I
 9 think it's overly broad and
 10 impossible to answer. But to the
 11 extent that you can answer...

12 MR. FREEDMAN: Do you have
 13 a copy of the case or citation,
 14 just to make sure we're talking
 15 about --

16 MR. COHN: 992 Fed 2nd.
 17 1101.

18 MS. HARDING: And I also
 19 object to the extent that the
 20 questioning is seeking to have a
 21 discussion with the witness about
 22 the legal conclusions that the
 23 Court might or might not reach as
 24 to the Plan and the application of

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1 certain precedent in law. I think
 2 it's improper.

3 Q. Do you need to hear the
 4 question again?

5 A. Yes, I do.

6 (The reporter reads the
 7 record as follows:

8 "QUESTION: Could you tell
 9 me your understanding of what
 10 happened in UNR?")

11 MS. HARDING: Object. Are
 12 you asking about the decision or
 13 what happened in the case?

14 MR. COHN: What the result
 15 was to the insurer in that case.

16 A. My understanding is that
 17 the court --

18 MS. HARDING: Same
 19 objections but go ahead.

20 A. -- held that the
 21 confirmation of a Plan of Reorganization
 22 triggered insurers' obligations to pay.

23 Q. Okay. I will represent to
 24 you that UNR as part of its settlement was

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to pay 150 million dollars of its stock into the Trust and that the holding was that the confirmation of that Plan required the insurer to immediately pay UNR the value of that stock. And my question to you is: Is it the intention of the insurer neutrality Plan provision in this Plan to protect the insurers from such a result in this case?

A. I believe that it is Grace's intent, yes.

MR. COHN: Okay, I have no other questions.

MR. BROWN: I have a couple of follow-ups.

MS. HARDING: Anybody on the phone that has questions?

MR. KRAMER: I know Dan Speights will have questions.

MR. DOWNEY: I have questions. This is Phil Downey for Scotts but I'm happy to wait my turn.

MR. COHN: If I may suggest

How is the State classified under the Plan?

MS. HARDING: Object to form. Go ahead, to the extent you know.

A. As a Class 6 indirect PI Trust claim.

Q. What is the basis for that classification?

A. Well --

MS. HARDING: I'm just going to object to the extent that it calls for attorney-client privilege or work product communications. To the extent you can answer without divulging that, then go forward. And to the extent that -- I do agree that it's broad and I'm not sure I understand what he's asking about, but if you do, Richard, go ahead.

A. My answer is going to be the definition of indirect PI Trust claim in the Plan.

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that PD be held to the end?

MS. HARDING: Yeah, so we'll wait for PD folks to the end. Are there insurers on the phone that have any questions? Any insurers on the phone? No?

MR. MANGAN: I may have questions. This is Kevin Mangan on behalf of the State of Montana.

MS. HARDING: Okay, great.

EXAMINATION BY

MR. MANGAN:

Q. Good afternoon, Mr. Finke. Can you hear me all right on the phone?

A. Yes.

Q. Okay, great.

Are you aware the State of Montana's filed a claim for contribution and indemnification against Grace?

A. Yes.

Q. And in this bankruptcy, obviously?

A. Yes.

Q. And a proof of claim.

Q. Is it your position that contribution and indemnification claims fit within the indirect PI definition?

A. Yes.

Q. Mr. Lewis had asked you a series of questions with regard to the treatment of Libby claimants' claims under the Plan and their claims specifically as to Maryland Casualty, the State of Montana and Burlington Northern. Do you recall that questioning?

A. Yes.

Q. I believe you testified -- and obviously correct me if I'm wrong -- that the Libby claimants' claims against the State that give rise to the State's claims against the debtors for indemnification or contribution go into the Trust.

MS. HARDING: Object to form.

Q. Is that your testimony?

A. That the Montana -- that the State of Montana's claims for

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1 **settlement agreement in front of you**
2 **involving Commercial Union?**

3 A. Yes.

4 **Q. And there was a contractual**
5 **indemnity provision in there? Do you**
6 **recall that?**

7 A. Yes.

8 **Q. And we had a discussion as**
9 **to what type of claim that was and you**
10 **indicated that that was an insurer**
11 **indemnified TDP claim?**

12 MR. LIESEMER: Object to
13 the form.

14 **Q. Do you recall that?**

15 MS. HARDING: Object to
16 form and to the question to the
17 extent that it's maybe mixing
18 apples and oranges; I'm not sure.
19 I'm just confused.

20 A. I believe -- I don't think
21 I identified it as such. I think I might
22 have agreed that it fit the definition
23 that's in the TDP.

24 **Q. Yes. I thought you said**

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1 form. To the extent you know,
2 but...

3 **Q. So would those be examples**
4 **of other contractual indemnity claims in**
5 **response to Mr. Plevin's question to you**
6 **of earlier today that are classified as**
7 **Class 6 claims?**

8 A. Yes, I believe they would
9 be.

10 **Q. Okay. And I think you**
11 **mentioned -- you reiterated here just a**
12 **moment ago that the classification of the**
13 **Fireman's Fund Insurance Company**
14 **contractual indemnity claim was something**
15 **that was under discussion, I think was the**
16 **term you used.**

17 A. Yes, sir.

18 **Q. Is that also true of the**
19 **contractual indemnity claims held by**
20 **settled asbestos insurance companies?**

21 MS. HARDING: Object to
22 form.

23 A. Not to my knowledge.

24 **Q. With respect to the**

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1 **that's what it was, but maybe I'm wrong.**

2 A. Okay, maybe I'm wrong. At
3 this hour, it could go either way.

4 **Q. Well, I'm not sure what to**
5 **make of that. Maybe I should go fishing**
6 **here.**

7 **What I'm driving at, is to the**
8 **extent that settled asbestos insurance**
9 **entities have contractual indemnity claims**
10 **against Grace under their respective**
11 **settlement agreements, those are**
12 **classified as Class 6 claims, are they**
13 **not?**

14 A. Yes.

15 MR. LIESEMER: Object to
16 form.

17 **Q. That's why my client, One**
18 **Beacon, got a Class 6 ballot, I presume?**

19 A. Yes.

20 **Q. And that's why my other**
21 **client, Seaton, got a Class 6 ballot,**
22 **correct?**

23 A. Yes.

24 MS. HARDING: Object to

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1 **Fireman's Fund Insurance Company claim,**
2 **when you say it's under discussion, do you**
3 **mean to suggest that it may be classified**
4 **differently than Class 6?**

5 MS. HARDING: Object to the
6 extent that it calls for
7 attorney-client, work product or
8 joint interest communications. If
9 you can answer without divulging
10 those, go for it.

11 A. Yeah, I think that follows
12 from that, that it's some aspect that's
13 under discussion.

14 **Q. Is one of the other**
15 **classifications being considered Class**
16 **9?**

17 A. I don't feel I can answer
18 that.

19 **Q. Different subject.**

20 **Earlier today I was asking you a**
21 **series of questions regarding Section 7.15**
22 **in the Plan. That's the insurance**
23 **neutrality provision. We had a lengthy**
24 **discussion about 7.15 and its interaction**

with 11.9, you'll recall?

A. Yes.

Q. That's the exculpation provision.

A. Yes.

Q. You indicated that you had some doubt, you thought there was some other provision that you were thinking about but couldn't recall that might -- I'm paraphrasing -- take precedence over the insurance neutrality provision in 7.15. Do you recall that testimony?

A. I recall that, yes.

Q. Okay. Since or during one of the many breaks we've had today, have you been able to figure out what provision it was that you were thinking of?

A. Yes, I believe so, and it would not have the effect of overriding the 7.15(a). The provision I was thinking of related to the court retaining exclusive jurisdiction over a number of issues, but even with -- first of all, that would not -- I don't think that would

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THE WITNESS: Yes.

MR. BROWN: -- when he was suggesting that there was an additional section to Section 7.15 in the Plan.

A. Yes. Yes, that's the only one.

MR. BROWN: All right.

MS. HARDING: I think -- object to -- I'm just going to object to the form of the question, Mike, because I think your -- maybe I'm wrong, but I think that your questions are suggesting that he testified that there was a provision in the Plan that overrode -- overrides Section 7.15(a) and I don't think that was his testimony. He said he was going to look for one and he said he didn't find one.

MR. BROWN: The one he had in mind was the one he just testified to.

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apply here. But especially with respect to insurance issues, as you probably know, the jurisdiction is not exclusive.

Q. That was the only other provision?

A. Yeah, that was -- that is the only one that I had in mind.

MS. HARDING: And object to the form of your question with the use of the term "other" because I don't think that he testified that there was --

MR. BROWN: I think he mentioned that there was at least one other provision, there might have been two, and I'm just trying to clarify whether the one he just referred to involving the retention of jurisdiction is the only other provision.

MS. HARDING: That he was thinking about.

MR. BROWN: That he was thinking of --

MS. HARDING: Yes, yes.

THE WITNESS: Correct.

MS. HARDING: Okay, sorry. I just wanted to make sure we're clear.

MR. BROWN: Thank you, Mr. Finke.

MS. HARDING: Mr. Speights, are you on?

MR. SCHIAVONI: Barbara, I just had 10 minutes of questioning. I can do it after Mr. Speights or before, whenever you want. This is Tanc Schiavoni.

MS. HARDING: Oh, Tanc, Mr. Schiavoni.

MR. SCHIAVONI: I'll be quick. I had to get off the line to book a flight to Pittsburgh.

MS. HARDING: Is Mr. Speights on the line?

MR. SPEIGHTS: I'm on, and I don't mind if the gentleman wants to go first.